IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 283 OF 1998

Sudam Balaji Tambe. ... Applicant.

V/s.

Chanashyam Dhondu Tambe
and another. ... Respondent.

K.S.Patil for the applicant.

Ms.M.M.Deshmukh, APP for respondent No.2-State.

CORAM: V.C.DAGA, J.

DATED: 4th July 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

. Perused revision application.

2. The petitioner has invoked revisional jurisdiction of this Court under section 397 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) to challenge the judgment and order dated 31st October, 1998 passed in Criminal Appeal No.37/1995 by the Sessions Judge, Raigad-Alibag confirming the judgment and order dated 21st September, 1995 passed in R.C.No.22/91 by the Judicial Magistrate, First Class, (J.M.F.C.) Shriwardhan convicting the applicant-accused under section 248(2) of Cr.P.C. of the offence punishable under section 324 of the Indian

Penal Code ("I.P.C." for short) and sentencing him to 8 months simple imprisonment and payment of fine of Rs.1,500/- and in default of payment of fine to suffer simple imprisonment for one month. The order of the Magistrate further directs payment of Rs.1,000/- towards compensation to the complainant under section 357 of Cr.P.C. out of the amount of fine received after the appeal period is over.

3. The prosecution case, in brief, is that on 22nd May, 1991 at about 22.00 hrs. the applicant went to the house of the complainant and P.W.3 (mother of complainant) and called upon P.W.3 to shift from the varanda, where she was sleeping; since he wanted to sleep in Varanda.

4. The applicant, the complainant-respondent No.1, who was sleeping in the kitchen, over heard the voice of the applicant and came out in the varanda and questioned the authority or propriety of the applicant in asking his mother to shift from the varanda. On being questioned, the applicant assaulted the complainant with sickle, due to which, he received four injuries, viz., on his left wrist, head, back and ribs. On hearing the shouts of his mother one Pandurang came there but by that time the applicant had left the spot.

5. The complainant was taken to Mhasala Police Station where he lodged his F.I.R. at 1.45 a.m. on 23rd May 1991. He was then referred to Hospital at Mhasala. However, as there was no Medical Officer available; he was taken to Hospital, Pabare village. Since necessary medical instruments were not available there to treat the complainant, he was taken to Cottage Hospital at Mangaon; where Dr.Chate (PW-6) after due examination admitted him for medical treatment.

6. The police, after the registration of complaint, started investigation in the matter. The applicant came to be arrested on 27th May, 1991. Later on he was released on bail. The police on completion of investigation filed chargesheet in the Court of J.M.F.C. at Shrivardhan for the charges under section 325 of the Indian Penal Code (I.P.C.).

7. The prosecution examined 7 witnesses, viz., PW.1- Ghansham Dhondu Tambe (complainant); PW.2- Motiram Damodar Sutar; PW.3- Rakhamabai Dhondu Tambe; PW.4- Shantaram Gopal Lad; PW.5- Bandu Sonu Pawar; PW.6- Trimbak V. Chate (M.O.); and PW.7- Janardan D. Madhavi (I.O.).

8. The learned J.M.F.C., Shrivardhan, after hearing both the sides, passed judgment and order dated 21st September, 1995, whereby applicant came to be convicted for the offence punishable under section 324 of I.P.C., and sentenced him to suffer 8 months simple imprisonment and to pay fine of Rs.1,500/- and in default of payment of fine to suffer simple imprisonment for one month.

9. The applicant was, however, acquitted for offences punishable under section 326 and 323 of I.P.C.

10. Being aggrieved by the aforesaid judgment and order; an appeal was filed by the applicant in the Court of Sessions Judge, Raigad-Alibag, which came to be dismissed as stated hereinabove.

11. Being aggrieved by the said order of the Sessions Judge, the applicant has filed this revision application.

12. The learned counsel appearing for the applicant canvassed several contentions leading to

misappreciation of evidence and tried to contend that the appellate Court ought to have observed that the eye witnesses were interested witnesses as such they were not independent. He submits that there was no intention or motive of the applicant to assault the complainant but the alleged incident happened at the spur of the movement as exchange of hot words took place between P.W.1 (complainant) and the applicant-accused, which has come in the evidence of P.W.1. He further submits that the incident took place on 22nd May, 1991. The conviction was recorded on 21st September, 1995 when the accused was 37 years old. Now he has crossed the age of 50 years. He was in jail from 31st October, 1998 to 7th January, 1999, as such, considering the time gap and the present age of the accused, the punishment may be reduced. In support of his submission he placed reliance on the Apex Court judgment in the case of **Suraj Mal Saraf v. Asstt. Collector of Customs**, 1987 SCC (Cri) 348 and unreported judgment of this Court in Criminal Revision Application No.125/1998 (**Ganapati Laxman Babar v. The State of Maharashtra**); wherein, considering the long time gap between conviction and decision of appeal or revision, the sentence was reduced. Thus, taking into account the long period of 12 years, during which

there was hanging sword on the head of the accused and considering his family liability, I find that now no useful purpose would be served by sending him in jail. Thus, imprisonment is reduced to as already undergone.

13. For the reasons stated herein, revision application is partly allowed. Conviction of the accused under section 324 of I.P.C. is maintained. However, order of sentence to the extent of period thereof is modified as under: to the extent of sentence stands modified as follows:

> The applicant/accused is sentenced to undergo imprisonment as already undergone from 30th October, 1998 to 7th January, 1999 and to pay a fine of Rs.25,000/-. In case of default to pay fine, applicant to undergo simple imprisonment for three months.

14. Revision application stands disposed of in terms of this order with no order as to costs.

JUDGE